IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6848 of 1999

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

LIYAKHATHUSSAIN REHMANBHAI BELIM - FRIEND OF DETENUE

Versus

DIST.MAGISTRATE MEHSANA

Appearance:

MR NM KAPADIA for Petitioner

MS TALATI AGP for Respondent No. 1, 2, 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 18/02/2000

ORAL JUDGEMENT

Heard the learned advocates. The petitioner challenges the order of preventive detention dated 28th June, 1999 made against Belim Farooqbhai Faquirmohammad by the District Magistrate, Mehsana, in exercise of the powers conferred upon him under section 3 (1) of the

Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the Act').

It appears that some four prohibition offences have been registered against the detenue and are pending trial. Besides, four persons have given statements in respect of the bootlegging and nefarious activities of the detenue, which adversely affect the public tranquility and which are detrimental to the public order. The detinue, therefore, is held to be a 'bootlegger' within the meaning of Section 2 (b) of the Act and his activities are found to be prejudicial to the maintenance of public order.

The only contention on which the impugned order is challenged before me is in respect of the supply of the order made on an application for bail in respect of the prohibition case No. 898 of 1998. Mr. Kapadia has relied upon the application for bail made by the detenu on 18th November, 1998, and the order made thereon on 18th November, 1998. The order reads to the effect that the accused be released on bail on the same terms on which he was earlier released on bail. Pursuant to the said order, the detenue had on 18th November, 1998, executed a bond in the sum of Rs.2000/-. Thus, it appears that before the said order dated 18th November, 1998, some other order releasing the detenue on bail was made. However, it is not known what were the terms and conditions of the said order, when it was made or on which application it was made. The detenue, therefore, through his advocate made a representation and demanded a copy of that earlier order referred to in the order dated 18th November, 1998. It is contended that the order made earlier was essential for making effective representation against the order of detention. Inspite of the demand on behalf of the detenue, the copy of the said order has not been supplied.

It is a well settled proposition of law that all the applications for release on bail made by the accused and the orders made thereon are vital documents and are required to be supplied to the detinue along with the order of detention. In the present case, admittedly, the Detaining Authority has failed to supply the above referred order. The action of the Detaining Authority is, therefore, violative of Article 22 (5) of the Constitution of India. The continued detention of the detenue is, therefore, null and void.

Petition is, therefore, allowed. The impugned order of preventive detention dated 28th June, 1999, is quashed and set aside. The detinue - Belim Farooqbhai Faquirmohammad, unless is required to be detained in some other case, be released forthwith. Rule is made absolute accordingly. There shall be no order as to costs.

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JOSHI*